TORTS—LIBEL AND SLANDER—PRIVILEGED PUBLICATION.—Plaintiff brought an action for libel alleging that defendant newspaper published a complaint which had been filed in a civil suit against plaintiff, and which contained libellous matter. The defendant pleaded that this was a report of a judicial proceeding and as such entitled to privilege. *Held,* that the complaint was not a judicial proceeding within the rule granting privilege to reports of judicial proceedings. *Meeker* v. *Post Printing Co.* (Colo. 1913), 135 Pac. 457.

The case is interesting because it is common practice for newspapers to publish complaints or parts of complaints which have been filed. It announces no new rule, as it seems to be settled in this country that pleadings in a suit are not judicial proceedings such as may be published with immunity. To constitute such proceedings some judicial action must be taken thereupon. *Park* v. *Detroit Free Press Co.,* 72 Mich. 560; *Cowley* v. *Pulsifer,* 137 Mass. 392; *Metcalf* v. *Times Publishing Co.,* 26 R. I. 674; *Cincinnati Gazette Co.* v. *Timberlake,* 10 Oh. St. 548; I COOLEY, TORTS (3rd Ed.), 447. However the case seems to apply the rule more directly than has been done hitherto, as the cases cited above are all attended by other circumstances. For instance in *Cincinnati Gazette Co.* v. *Timberlake,* supra, the published report included comment on the allegations of the complaint. Pleadings are however, judicial proceedings from the standpoint of the party pleading, and any statements the party may make in such pleading, if material, are absolutely privileged. A different rule prevails in the case of *ex parte proceedings,* and it has been held that reports of such proceedings are privileged. *Metcalf* v. *Times Publishing Co.,* supra.

WATERS—DIVERTING FLOOD WATERS.—D was the owner of land bordering on a river. P owned adjoining land below that of D but was not a riparian owner, a third party owning a strip of land between P's lot and the river. The bank of the river opposite P's land was about four feet high but above this, on D's land, it was much lower and as a result the river, in times of a freshet, overflowed D's land and ran over P's lot, depositing sediment which was valuable for fertilizing purposes. D, in building a conduit, raised a bank of earth extending from the river bank along the upper line of P's land, which prevented P from getting the benefit of the overflow. D, in raising the bank, did not attempt to divert the water for any purposes connected with his own land but merely to carry it to a reservoir to make it available for sale. P sues D for resulting damages. *Held* that P could recover for damages arising from the diversion of the flood water, such damage not being *damnum absque injuria. Thompson* v. *New Haven Water Co.* (Conn. 1913), 86 Atl. 585.

The facts in this case are novel because they involve the right of a lower proprietor to have the natural flood-flow continued to his land, while in the other cases where the question of flood-water has been considered it has concerned the right of one proprietor to keep flood-waters from his land, thus throwing an additional amount upon the proprietor above, or upon the proprietor across the river, to his damage. However, the court seemed to apply the same rule which would have been applicable if either of the two latter

had been the case. The question as to what rule of law should be applied to cases involving flood-waters has been very widely considered, the English courts going to the full extent of treating the flood-water as part of the stream, *Menzies* v. *Breadalbane,* 3 Bligh. N. S. 414; *Rex* v. *Trafford,* 1 Barn. & Ad. 814, and this rule has been followed to some extent by courts in the United States. *O'Connell* v. *East Tenn. etc. R. Co.,* 87 Ga. 246; *Chicago etc. R. Co.* v. *Emmert,* 53 Neb. 237; *Spelman* v. *Portage,* 41 Wis. 144. Many courts have held that flood-waters are surface-waters, but having arrived at this conclusion were in most cases no nearer a final decision because then the question arises as to what rule applies to such surface-waters, and this must necessarily be determined by the particular facts in each case. *Cairo & V. R. Co.* v. *Stevens,* 73 Ind. 283, 38 Am. Rep. 139; *McCormick* v. *Kansas City etc. R. Co.,* 57 Mo. 433; *Morris* v. *Council Bluffs,* 67 Iowa 343, 56 Am. Rep. 343. On the other side there are a greater number of cases holding flood-waters not surface-waters. *Crawford* v. *Rambo,* 44 Ohio St. 287; *Gillett* v. *Johnson,* 30 Conn. 180; *Macomber* v. *Godfrey,* 108 Mass. 219; *West* v. *Taylor,* 16 Oregon 165; *Uhl* v. *Ohio River R. R. Co.,* 56 W. Va. 494, 3 Am. & Eng. Ann. Cases 201; *Shane* v. *Kansas, etc. R. Co.,* 71 Mo. 238, 36 Am. Rep. 480. Probably the best rule is that followed by this case, where it is stated that flood-water should be treated as forming a class by itself apart from surface-waters and natural water courses in determining the rights and liabilities arising therefrom. This is sanctioned by the note in 25 L. R. A. 527, 530, and in FARNHAM, WATERS AND WATER RIGHTS, § 879. This of course does not mean that one hard and fast rule can be formulated in respect to rights concerning flood-waters, because such a rule could not work justice in every case. A different rule would be applicable in the case of flood-waters flowing in one general direction, than would be applied in the case of flood-waters which lay spread about upon the land until they percolate through the soil or evaporate.

WILLS—CONTRACT TO DEVISE—STATUTE OF FRAUDS—PART PERFORMANCE.—Husband and wife, in accordance with an oral agreement that they would execute mutual wills and that such wills should be irrevocable except under certain conditions, executed wills simultaneously by which each gave his or her real and personal property to the other. *Held,* that the execution of the wills was not such part performance as to take the oral agreement out of the operation of the Statute of Frauds. *In re Edwall's Estate* (Wash. 1913), 134 Pac. 1041.

The decided weight of authority is with the decision in this case, and it is difficult to see how any other conclusion could logically be reached. The making of the will cannot be relied upon as an act constituting part performance, for a will, being ambulatory, is subject to revocation by various acts of the testator. There has been no transfer of real estate, for the property devised in the will remains, until his death, in the hands of the testator and subject to his own control. *Gould* v. *Mansfield,* 103 Mass. 408. One case, however, and a recent one, has held that the oral agreement and the execution of the reciprocal wills constitute a single transaction and therefore that